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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Access Charge Reform

Price Cap Performance Review
for Local Exchange Carriers

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CC Docket No. 96-262

CC Docket No. 94-1

RM-9210

REPLY COMMENTS OF
RCN TELECOM SERVICES, INC.

RCN Telecom Services, Inc. ("RCN"), respectfully submits the following reply comments in response to the October 5, 1998 Public Notice requesting comments and reply comments in the above-captioned proceedings.¹

I. INITIAL COMMENTS CONFIRM THAT CONSIDERATION OF PRICING FLEXIBILITY IS PREMATURE IN LIGHT OF THE NASCENT STATE OF COMPETITION IN THE LOCAL EXCHANGE TELECOMMUNICATIONS MARKET

RCN reiterates its position that it is premature to consider establishing pricing flexibility for incumbent LECs, given the lack of meaningful competition in the local exchange telecommunications market. The initial comments submitted in this proceeding demonstrate that

¹ *Commission Ask Parties to Update and Refresh Record For Access Charge Reform and Seeks Comment on Proposals For Access Charge Reform Pricing Flexibility*, Public Notice, FCC 98-256, released October 5, 1998.

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no meaningful level of competition exists in the local exchange market. For example, as RCN noted in its initial comments, and as other commenters in this proceeding have pointed out, competitive LECs had less than 1.4% of total switched access revenues in 1997.² Less than 0.02% of all buildings are connected to CLEC networks.³ In addition, RBOCs have approximately 99% of switched access lines,⁴ and incumbent LEC facilities dwarf CLEC facilities.⁵ However competition is measured, CLECs have only a very small percentage of the local market.⁶ In addition, as numerous commenters pointed out in their initial comments, the Commission has yet to approve a Section 271 application, because even the minimum necessary prerequisites to the development of local exchange competition as set forth in the Commission's competitive checklist have not been met by any incumbent LEC.⁷

² 1998 *Annual Report on Local Telecommunications Competition*, 9th Edition, New Paradigm resources Group, Inc., Chapter 4, Table 5, at 8.

³ Letter to Secretary, Federal Communications Commission, from Donald H. Sussman, MCI Telecommunications Corporation, May 15, 1998, page 5, citing MCI market research.

⁴ Letter to Secretary, Federal Communications Commission, from Donald H. Sussman, MCI Telecommunications Corporation, May 15, 1998, page 3, citing MCI market research.

⁵ As of 1996, incumbent LECs had installed 12.3 million miles of fiber whereas CLECs had installed only 1.3 million miles of fiber. *1997 Statistics of Communications Common Carriers*, Common Carrier Bureau, Federal Communications Commission, December 5, 1997, Table 12.

⁶ Collectively, CLECs captured 5.1% of the business market for local telecommunications services in 1997. *United States Competitive Local Markets*, Strategis Group (1998). In 1996 the CAP/CLEC share of nationwide local service revenues, including local exchange and access services, was 1%. Industry Analysis Division, Telecommunications Industry Revenue: TRS Fund Worksheet Data (rel. Nov. 1997).

⁷ See e.g., ACTA Comments at 4-5.

In spite of the overwhelming evidence to the contrary, the United States Telephone Association (“USTA”), the major trade association for incumbent LECs, claims that there has been “dramatic growth in competition from CLECs.” In support of its claim, USTA states that “[t]he number of CLECs now exceeds the number of incumbent LECs in the U.S. having grown over 250 percent since the access reform order was adopted.”⁸ The mere fact that a number of CLECs have gone through the state regulatory process of obtaining certificates to provide local exchange service does not mean that these companies have surmounted all of the substantial hurdles (both regulatory and incumbent LEC-created) that have forestalled the ability of would-be CLECs to actually provide local exchange service. On the contrary, as was reiterated by numerous commenters in their initial comments, the CLECs have faced substantial roadblocks, and as a result, competition in the local exchange telecommunications market is negligible at best.

USTA also refers to predictions by financial analysts in support of its contention that in the future CLECs may capture portions of the local telecommunications market, and notes that the numbers of CLECs providing switched services is growing.⁹ In effect, USTA is playing with numbers, percentages, and predictions in an attempt to obscure the present-day reality that competition in the local exchange telecommunications market has not yet developed in any meaningful sense. Pricing flexibility as proposed by USTA cannot occur until and unless local competition has developed.

⁸ USTA Comments at 6.

⁹ *Ibid* at 3.

USTA also asserts in its comments that “CLECs are targeting the lucrative business customers and bypassing residential customers.”¹⁰ As noted in the introduction to RCN’s initial comments, RCN’s business plan emphasizes the residential market and is structured to offer consumers a combination of local exchange and long distance telephone service, high-speed Internet access, and traditional cable or OVS services in one bundled offering. As a new entrant provider of local exchange service and other telecommunications services, primarily to residential subscribers, RCN can attest that providing residential service as a CLEC is a difficult undertaking. CLECs seeking to enter the local exchange market encounter numerous significant LEC-created hurdles, including pricing issues, and difficulties in implementing interconnection agreements. These hurdles have the effect of delaying competition and making it more difficult and much more expensive for CLECs to enter the local exchange market in general (both residential and commercial). It is not surprising, then, that during the nascent stages of local competition, competition for residential customers may develop more slowly.

Finally, RCN reiterates that the regulatory assumptions underpinning pricing flexibility have been invalidated. As noted in RCN’s initial comments as well as in the comments of numerous other commenters, in the *Access Charge Reform Order*,¹¹ the Commission assumed that its pricing

¹⁰ USTA at 9.

¹¹ *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges*, Report and Order, CC Docket Nos. 96-262, 94-1, 91-213, and 95-72, 12 FCC Rcd 15982 (1997) aff’d sub nom. Southwestern Bell Tel. v. Co. FCC, No. 97-2618 (8th Cir. Aug. 19, 1998); *Price Cap Performance Review for Local Exchange Carriers*, CC Docket 94-1, 12 FCC Rcd 16642 (1997), appeal pending sub nom. USTA v. FCC, No. 97-1469 (D.C. Cir.) (“*Access Reform Report and Order*”).

guidelines and other determinations in the *Local Competition Order*¹² implementing the key market-opening provisions of the 1996 Act would set the stage for competition in provision of interstate access services. It therefore adopted a “market-based” approach to achieve its goals for access reform that would rely on the development of competition to force access rates toward levels based on forward looking economic costs.¹³ However, the Commission’s assumption has been invalidated by the decision of the 8th Circuit in *Iowa Utilities Board* vacating the Commission’s pricing guidelines for unbundled network elements (“UNEs”) and its requirement that incumbent local exchange carriers provide combined UNEs. The comments submitted by numerous commenters support RCN’s argument that *Iowa Utilities Board* and the negligible competitive presence of competitive LECs eliminate any rational basis for proceeding with pricing flexibility.

Finally, RCN reiterates that, while incumbent LEC compliance with the key market opening provisions of the 1996 Act should be a precondition of pricing flexibility, widespread vigorous actual competition must exist in the marketplace before any pricing flexibility is granted.

Rather than considering pricing flexibility at this time, RCN urges the Commission to instead seek to establish a more thorough implementation and enforcement of the key interconnection, unbundling, and resale obligations of Section 251(c) of the Act.¹⁴ RCN submits that this would be

¹² *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15805-15806, paras. 694-606 (1996) (*Local Competition Order*), vacated in part, *aff’d in part*, *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *cert. granted on other grounds sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 118 S.Ct. 879 (1998).

¹³ *Access Reform Report and Order* para. 264.

¹⁴ 47 U.S.C. Section 251(c).

most consistent with the goals of the 1996 Act and could provide the foundation for eventual consideration of pricing flexibility.

II. THE USTA PROPOSAL DOES NOT PROVIDE ANY BASIS FOR ESTABLISHING PRICING FLEXIBILITY

RCN reiterates its position that the Ameritech and Bell Atlantic pricing flexibility proposals are premature and would significantly depart from the Commission's conception of the basis for granting pricing flexibility. For essentially the same reasons, USTA's pricing flexibility proposal also does not provide any basis for establishing pricing flexibility. Pricing flexibility cannot be based on such meager criteria as proposed in these proposals, such as the incumbent LEC having concluded a state-approved interconnection agreement or statement of generally available terms ("SGAT"). Moreover, under the USTA proposal, switched access pricing flexibility apparently would be triggered by a factual determination that no greater than one customer is utilizing alternative switched access services ("customers are utilizing alternative switched access services.")¹⁵ In short, none of the "competitive triggers" set forth in the USTA proposal even come close to ensuring that meaningful competition actually exists prior to the establishment of pricing flexibility. In fact, pricing flexibility based on such meager triggers would merely serve to perpetuate (and possibly increase) the incumbent LECs' historical monopoly powers, to the detriment of CLECs and consumers alike. RCN submits that, because the proposals of Ameritech, Bell Atlantic, and USTA would establish sweeping pricing flexibility based on factors that do not ensure the prerequisite existence of meaningful levels of competition, the Commission should reject these proposals.

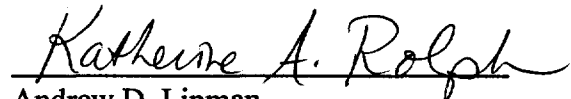
¹⁵ USTA at Attachment E.

III. CONCLUSION

For these reasons, the Commission should not adopt pricing flexibility at this time. RCN submits that the approach to pricing flexibility reflected in the proposals of Ameritech, Bell Atlantic and USTA would preserve the incumbent LECs' ability to control the ultimate fate of competition in the local exchange market without requiring them to meet any reasonable standard of either potential or actual competition. RCN reiterates that the Commission should not consider pricing flexibility for the incumbent LECs until such time as a far greater degree of actual competition exists in the local exchange market. In addition, if in the future the Commission proceeds with a pricing flexibility approach to access reform, it should also require that incumbent LECs first demonstrate full compliance with a suitable competitive checklist.

Respectfully submitted,

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I, Alice M. Curry, certify that I have this 9th day of November, 1998, served copies of the Reply Comments of RCN Telecom Services, Inc. via hand delivery*, or First Class U.S. Mail, on the parties listed below.

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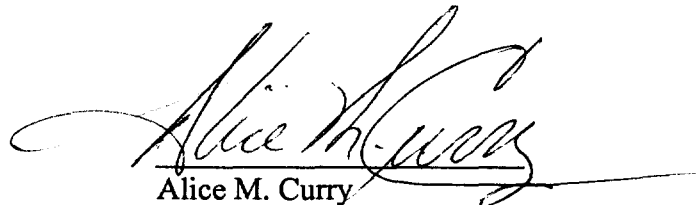
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